

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERARDO SALTO-ROCHA (1),

JOSE HERNANDEZ-RIVAS (2),

Defendants.

Criminal Case No. 08 cr 2430-BTM

Mag. Docket No. 08 mj 2098

~~PROPOSED~~

ORDER FOR VIDEO DEPOSITION AND
RELEASE OF MATERIAL WITNESS
PEDRO NIETO-ROJAS

JUDGE: Hon. Barry Ted Moskowitz
CRTRM: 15, Fifth floor

DATE: August 15, 2008
TIME: 2:30 p.m.

Upon request of counsel for the material witness PEDRO NIETO-ROJAS ("NIETO")
Gayle Mayfield-Venieris, and good cause appearing:

1. The material witness NIETO, being held in custody in case number 08 cr 2430-BTM, shall be deposed on September 30, 2008 at 10:00 a.m./ p.m. The deposition will take place in the office of the United States Attorney located at 880 Front Street, Fifth Floor, San Diego, California, 92101.

2. All parties, meaning the United States and the defendants, shall attend the material witness deposition. The arresting agency shall bring the material witness to the deposition and a marshal shall remain present during the proceeding. If the defendant are in custody, they shall be brought separately to the deposition and a marshal shall remain present

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2 during the proceeding.

3 3. The United States Attorney's Office shall provide a videotape operator
4 ("operator") and if necessary, arrange for a court certified interpreter to be present for the
5 material witness. The cost of the interpreter of the material witness shall be borne by the United
6 States Attorney's Office.

7 4. If the defendant needs an interpreter other than the interpreter for the material
8 witness, defense counsel shall arrange for a certified court interpreter to be present. The cost of
9 a separate interpreter for the defendant shall be paid by the Court.

10 5. The United States Attorney's Office shall arrange for a certified court reporter to
11 be present. The court reporter shall stenographically record the testimony and serve as a notary
12 and preside at the deposition in accordance with Rule 28(a) of the Federal Rules of Civil
13 Procedure. The cost of the court reporter shall be borne by the United States Attorney's Office.

14 6. The deposition shall be recorded by videotape, meaning a magnetic tape that
15 records sound as well as visual images. At the conclusion of the deposition, on the record, the
16 witness or any party may elect to have the witness review the videotaped record of their
17 deposition to check for errors or omissions and to note any changes. Any errors, omissions or
18 changes, and the reasons for making them shall be stated in writing and such writing shall be
19 signed by the witness, delivered to the notary in a sealed envelope and filed in the same fashion
20 as described in Paragraph 17 below, unless the parties agree on the record to a different
21 procedure.

22 7. The operator shall select and supply all equipment required to videotape the
23 deposition and shall determine all matters of staging and technique, such as number and
24 placement of cameras and microphones, lighting, camera angle, and background. The operator
25 shall determine these matters in a manner that accurately reproduces the appearance of the
26 witness and assures clear reproduction of both the witness's testimony and the statements of
27 counsel. The witness, or parties to the action, may object on the record to the manner which the
operator handles any of these matters. All such objections shall be deemed waived unless made

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2 promptly after the objector knows, or has reasonable grounds to know, of the basis of such
3 objection.

4 8. The deposition shall be recorded in a fair, impartial and objective manner. The
5 videotape equipment shall be focused on the witness; however, the videotape operator may,
6 when necessary, focus upon charts, photographs, exhibits, or like material being shown to the
7 witness.

8 9. Before examination of the witness begins, the Assistant U.S. Attorney shall state
9 on the record his name; the date, time, and place of the deposition; the name of the witness; the
10 identity of the parties and the names of all person present in the deposition room. The court
11 reporter shall then swear the witness on the record. Prior to any counsel beginning an
12 examination of the witness, that counsel shall identify himself and his respective client on the
13 record.

14 10. Once the deposition begins, the operator shall not stop the videotape recorder
15 until the deposition concludes, except that, any party or the witness may request a brief recess,
16 which request will be honored unless another party objects and specifies a good faith basis for
17 the objection on the record. Each time the tape is stopped or started, the operator shall state on
18 the record the time the recording stopped and the time it resumed. If the deposition requires the
19 use of more than one tape, the operator shall sequentially identify on the record the end and
20 beginning of each tape.

21 11. All objections both as to form and substance shall be recorded as if the objection
22 had been overruled. The Court shall rule on objections at the appropriate time. The party raising
23 the objection(s) shall prepare a transcript for the Court to consider. All objections to the
24 evidence shall be deemed waived unless made during the deposition.

25 12. The party offering the deposition into evidence at trial shall provide the Court
26 with a transcript of the portions so offered.

27 13. Copies of all exhibits utilized during the videotaped deposition shall be attached
to the videotaped record.

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2 14. At the conclusion of the deposition, any objection, including the basis, to release
3 of the material witness from custody shall be stated on the record. If there is no objection, the
4 attorney for the material witness shall immediately serve all parties with a "Stipulation and
5 Proposed Order for Release of Material Witness" and submit the Order to the Clerk of the Court
6 for the Judge's signature. Prior to release from custody, the attorney for the Government shall
7 serve the material witness with a subpoena for the trial date and a travel fund advance letter.

8 15. The operator shall provide a copy of the videotaped deposition to any party who
9 requests a copy at that party's expense. After preparing the requested copies, if any, the operator
10 shall deliver the original videotape to the notary along with a certificate signed by the operator
11 attesting that the videotape is an accurate and complete record of the videotaped deposition. The
12 operator shall then deliver the videotape to the notary along with a certificate signed by the
13 operator attesting that it is an accurate and complete recording of the deposition. The notary
14 shall file the original tape and certification with the Clerk of the Court in a sealed envelope
15 marked with the caption of the case, the name of the witness and the date of the deposition.

16 16. The notary shall file with the Clerk of Court in a sealed envelope the original
17 videotape, along with any exhibits offered during the deposition. The Sealed envelope shall be
18 marked with the caption of the case, the name of the witness, and the date of the deposition. To
19 that envelope, the notary shall attach the certificate of the operator. If all counsel stipulate on the
20 record, the Government may maintain the original videotape until production is ordered by the
21 Court or requested by any party.

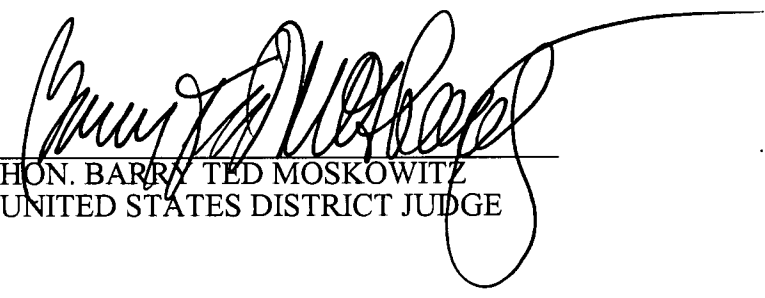
22 17. Unless waived by the parties, the notary must give prompt notice to all parties of
23 the filing of the videotaped record of the deposition with the Court pursuant to Federal Rule of
24 Civil Procedure 30(f)(3).

25 18. If any party objects on the record to the release of the material witness from
26 custody, the objecting party must request in writing a hearing on the issue before the federal
27 judge who is assigned the case or to such other district judge or magistrate judge as they
designate. Notice of the Request for Hearing must be served on all parties and filed with the

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2 Clerk of Court within twenty-four (24) hours after the completion of the deposition, with a
3 courtesy copy to chambers. The Court will set a briefing schedule, if appropriate, and a date and
4 time for the objection to be heard as soon as reasonably practicable. At the hearing, the objecting
5 party must establish to the Court's satisfaction an appropriate legal basis for the material witness
6 to remain in custody. If, after the hearing, the Court orders the release of the material witness,
7 the material witness's attorney shall immediately present the release order to the Court for
8 signature and filing. Before release of the material witness from custody, the Government shall
9 serve the material witness with a subpoena for the trial date and a travel fund advance letter.

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11 **IT IS SO ORDERED.**

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14 Dated: 8/29/08


HON. BARRY TED MOSKOWITZ
UNITED STATES DISTRICT JUDGE

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